

**In the Matter Of:**  
*JOHN RUFFINO vs*  
*DR. CLARK ARCHER*  
*3:17-cv-00725*

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*ROGER CRINER*

*May 11, 2018*

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Roger Criner - May 11, 2018

1                   UNITED STATES DISTRICT COURT  
2                   MIDDLE DISTRICT OF TENNESSEE  
3                   NASHVILLE DIVISION

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4                   JOHN RUFFINO and                 )  
5                   MARTHA RUFFINO,                 )  
6                   husband and wife,                 )  
7                   Plaintiffs,                         )  
8                   VS.                                 )CIVIL ACTION NO.:  
9                   )3:17-cv-00725  
10                  DR. CLARK ARCHER and             )  
11                  HCA HEALTH SERVICES OF         )  
12                  TENNESSEE, INC., d/b/a )  
13                  STONECREST MEDICAL                 )  
14                  CENTER,                             )  
15                  Defendants.                         )

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16                   DEPOSITION  
17                   OF  
18                  ROGER D. CRINER, JR., M.D.  
19                  MAY 11, 2018

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21  
22                  Alpha Reporting Corporation  
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24                  Memphis, Tennessee 38103  
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1                 The deposition of ROGER D. CRINER, JR.,  
2 M.D., is taken on this, the 11th day of May, 2018,  
3 on behalf of the Plaintiffs, pursuant to notice and  
4 consent of counsel, beginning at approximately  
5 12:53 p.m. in the offices of Hall Booth Smith, 40  
6 South Main Street, Suite 2800, Memphis, Tennessee.  
7                 This deposition is taken pursuant to the  
8 terms and provisions of the Federal Rules of Civil  
9 Procedure.

10 All forms and formalities, including the  
11 signature of the witness, are waived, and objections  
12 alone as to matters of competency, irrelevancy and  
13 immateriality of the testimony are reserved to be  
14 presented and disposed of at or before the hearing.

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1 APP E A R A N C E S  
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1 I N D E X  
2 ROGER D. CRINER, JR., M.D.  
BY MR. MANOOKIAN

4 EXHIBIT INDEX  
5 1 Dr. Criner's File  
6  
7 COURT REPORTER'S CERTIFICATE

8

4 ROGER D. CRINER, JR., M.D.,  
5 having been first duly sworn, was examined and  
6 testified as follows:  
7 EXAMINATION  
8 BY MR. MANOOKIAN:  
9 Q. Can you state your full name for the  
10 record?  
11 A. Roger Dale Criner, Jr.  
12 Q. And, Dr. Criner, what is your current  
13 address? Where do you practice?  
14 A. It's on Kate Bond Road in Bartlett. I  
15 don't know the actual street number of the hospital.  
16 Q. What is the hospital?  
17 A. Saint Francis Bartlett.  
18 Q. And what is your professional role at that  
19 hospital?  
20 A. I am the system medical director of that  
21 emergency department and the emergency department  
22 also at Saint Francis Park which is on Park Avenue.  
23 That's my current title.  
24 Q. Did you bring any materials with you today  
25 to this deposition?  
A. Yes.  
Q. Can I see them?  
A. Sure.

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<p>1 Q. Are these all the materials you brought 2 today?</p> <p>3 A. Yes.</p> <p>4 Q. Is that your laptop?</p> <p>5 A. It is.</p> <p>6 Q. Why did you bring that?</p> <p>7 A. Because the files that are on the thumb 8 drive were the various depositions and reports that 9 were sent to me. And I also have them loaded onto 10 here so I can pull them up and read them, if needed.</p> <p>11 Q. Got it. Is this thumb drive for me?</p> <p>12 A. It -- sure.</p> <p>13 Q. Are these materials for me?</p> <p>14 A. I would -- we can certainly make copies of 15 them. Some of them, great. There's a couple of 16 them I would like to retain a copy for myself.</p> <p>17 Q. Okay. Tell me what portion of these 18 materials you want to retain.</p> <p>19 A. My time log I would like to retain. The 20 CV you can have. The subpoena, the expert report 21 you can have. The printed-off articles you can 22 have. And I would like to keep that as well. 23 Although they could probably be emailed to me later, 24 if needed.</p> <p>25 Q. Have you been retained to give opinions in</p>	<p>6</p> <p>1 this case?</p> <p>2 A. I have been retained to give an opinion on 3 Dr. Archer.</p> <p>4 Q. Is that the extent of the opinion 5 testimony you intend to offer?</p> <p>6 A. Yes.</p> <p>7 Q. Who retained you?</p> <p>8 A. Hall Booth Smith.</p> <p>9 Q. How were you first contacted by Hall Booth 10 Smith?</p> <p>11 A. I believe I was called by Pamela 12 Chamberlain.</p> <p>13 Q. Do you have an existing relationship with 14 Hall Booth Smith or Pamela Chamberlain?</p> <p>15 A. I think I've done one other case with 16 them -- one or two other cases.</p> <p>17 Q. Do you know if it's one or two?</p> <p>18 A. I think there's two that -- I definitely 19 know of one other one. I think there also is 20 another one that I've done.</p> <p>21 Q. Do you recall the names of either the 22 plaintiffs or the defendants in those cases?</p> <p>23 A. One of them I do. Last name is Short.</p> <p>24 Q. What's the last name?</p> <p>25 A. Short.</p>
<p>1 Q. Is that the defendant?</p> <p>2 A. That is -- I can't remember offhand.</p> <p>3 Q. Were you retained to give opinions about a 4 doctor's care in that case?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember the name of the doctor 7 whose care you evaluated in that case?</p> <p>8 A. Not at this time.</p> <p>9 Q. Is the other case Beverly Prescro versus 10 William Byrd?</p> <p>11 A. No. That was a case from, I believe, 12 2011. And Jerry Mitchell was the attorney that I 13 was working with on that case. The name of his firm 14 I think has changed.</p> <p>15 Q. How many cases have you offered opinion 16 testimony in in the last five years, to the best of 17 your recollection?</p> <p>18 A. Cases that have been sworn testimony or 19 depositions, just one, that one that was listed on 20 that expert opinion.</p> <p>21 Q. Well, how many cases have you provided 22 even a written report in in the last five years?</p> <p>23 A. Just that one.</p> <p>24 Q. So what did you do in the Short case?</p> <p>25 A. Nothing as of this time, other than review</p>	<p>8</p> <p>1 some preliminary records.</p> <p>2 Q. What about the other case with Hall Booth?</p> <p>3 A. I can't recall.</p> <p>4 Q. When were you retained in that case?</p> <p>5 A. I can't -- on the Short case?</p> <p>6 Q. Yes, sir.</p> <p>7 A. That's been I think within the last six 8 months perhaps. But I would have to look in my 9 records to be certain.</p> <p>10 Q. The other case whose name you can't 11 recall, do you recall how long ago it was that you 12 were first retained in that case?</p> <p>13 A. No.</p> <p>14 Q. Has it been within the last year?</p> <p>15 A. I don't believe it has. But again I am 16 not certain about that. I know that I've had 17 conversations with Miss Chamberlain about the Short 18 case and this case. I just can't recall if there's 19 been three cases or not.</p> <p>20 Q. Have you ever been the defendant in a 21 lawsuit regarding medical care?</p> <p>22 A. Yes, I was listed once.</p> <p>23 Q. Were you recently non-suited from that 24 case?</p> <p>25 A. Yes.</p>

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<p>1 Q. What were the allegations globally, 2 because I understand there are a number of 3 defendants in that case, and then as to you 4 individually prior to you being non-suited?</p> <p>5 A. The allegation, to the best of my 6 recollection, was the patient came in to be seen for 7 back pain, felt like there -- the provider felt like 8 there may be a problem with the disc in the low 9 back, suggested conservative therapy initially and 10 follow-up with an orthopedic spine specialist. The 11 patient I think a month later ended up going to the 12 orthopedic spine specialist, at some point did get 13 an MRI which did show a bulging disc. A decision 14 was made with the orthopedic spine doctor to have 15 surgery. And after surgery, the patient had a foot 16 drop. And the allegation, to the best of my 17 recollection, was the surgery should have been done 18 more emergently upon that initial emergency room 19 visit.</p> <p>20 Q. Did you give a deposition in that case?</p> <p>21 A. I don't believe I did.</p> <p>22 Q. Who represented you in that case?</p> <p>23 A. I think that was also Jerry Mitchell.</p> <p>24 Q. What total amount of time have you spent 25 evaluating the care in this case? If you need to</p>	<p>10</p> <p>1 consult your --</p> <p>2 A. Yeah, this is my time log right here.</p> <p>3 Q. -- time log, you can do so.</p> <p>4 A. I'm going to have to add this up. 37.25 5 hours, if my math is correct, up to this point, not 6 including today.</p> <p>7 Q. Having spent 37.25 hours evaluating the 8 care provided in this case, do you agree that 9 Mr. Ruffino had a stroke on February 17th, 2016?</p> <p>10 A. No, I do not.</p> <p>11 Q. Do you believe that Mr. Ruffino had a 12 stroke in February of 2016?</p> <p>13 A. No, I do not. I believe he had a stroke. 14 I don't believe I know from looking at the records 15 exactly when that occurred.</p> <p>16 Q. But you can't say to a reasonable degree 17 of medical certainty that Mr. Ruffino had a stroke 18 on February 17th, 2016?</p> <p>19 A. I believe a stroke had occurred at some 20 point and he had symptoms of it that day.</p> <p>21 Q. Maybe I'm missing you. I thought you just 22 told me that he did not have a stroke on February 23 17th, 2016?</p> <p>24 A. Misunderstanding of what I'm saying. I do 25 believe that he has had a stroke. I do not know</p>
<p>12</p> <p>1 that I can say with certainty that it was at that 2 time on that day. I believe it was before then.</p> <p>3 Q. Do you know if he had a stroke on February 4 17, 2016?</p> <p>5 A. He had symptoms of a stroke.</p> <p>6 Q. But you can't say to a reasonable degree 7 of medical certainty that Mr. Ruffino had a stroke 8 on February 17, 2016, correct?</p> <p>9 A. I believe the stroke started earlier than 10 that.</p> <p>11 Q. Do you believe to a reasonable degree of 12 medical certainty that Mr. Ruffino experienced a 13 stroke on February 17, 2016?</p> <p>14 A. My answer is still the same. He had 15 symptoms of a stroke. He had had a stroke, but I 16 don't know that it started on that day. I think it 17 started earlier than that day.</p> <p>18 Q. And that's fine if you don't know. That's 19 a perfectly acceptable answer.</p> <p>20 By not knowing, then you certainly can't 21 express to a reasonable degree of medical certainty 22 that Mr. Ruffino had a stroke on February 17, 2016, 23 correct?</p> <p>24 MR. CARTER: Object to form.</p> <p>25 THE WITNESS: That is not correct.</p>	<p>12</p> <p>13</p> <p>1 BY MR. MANOOKIAN:</p> <p>2 Q. Are you saying to a reasonable degree of 3 medical certainty that Mr. Ruffino did have a stroke 4 on February 17, 2016?</p> <p>5 A. Mr. Ruffino had symptoms and had findings 6 consistent with a stroke on that day. I think the 7 difficulty I'm having is when you say he had a 8 stroke on that day, the implication that I'm hearing 9 is it started on that day. And that is the part 10 that I'm disagreeing with. I think it started 11 before.</p> <p>12 Q. Are you saying, regardless of when it 13 started, Mr. Ruffino experienced a stroke on 14 February 17, 2016?</p> <p>15 A. He had symptoms and signs of a stroke on 16 that day. I don't think we can be certain at this 17 point exactly when that started. I think it started 18 earlier than that.</p> <p>19 Q. Okay. And I'm not talking about when it 20 started right now or symptoms or signs. Symptoms 21 and signs are different than an actual clinical 22 occurrence of the stroke.</p> <p>23 Let me just ask you this. At any time in 24 February of 2016 did Mr. Ruffino experience a 25 stroke?</p>

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<p>1      A.    Yes.</p> <p>2      Q.    What date?</p> <p>3      A.    I don't think we know that.</p> <p>4      Q.    You can't say to any degree of medical</p> <p>5    certainty on what date Mr. Ruffino experienced a</p> <p>6    stroke in February of 2016, correct?</p> <p>7      A.    My opinion is the symptoms started before</p> <p>8    he -- it was a wake-up stroke.</p> <p>9      Q.    Listen to my question. Can you say to a</p> <p>10 reasonable degree of medical certainty on what day</p> <p>11 or days in February of 2016 Mr. Ruffino experienced</p> <p>12 a stroke?</p> <p>13      A.    I believe he woke up with symptoms of a</p> <p>14 stroke on that day. It may have started before the</p> <p>15 actual -- before midnight, whatever time he went to</p> <p>16 bed is the last known normal.</p> <p>17      Q.    I hear you say woke up with symptoms. I'm</p> <p>18 asking about actually experiencing a stroke not just</p> <p>19 having the symptoms. What symptoms do you think he</p> <p>20 woke up with on February 17, 2016?</p> <p>21      A.    By Mr. Ruffino's deposition, when he</p> <p>22 presented to Home Depot for work at 7:30, an</p> <p>23 external person, a manager at Home Depot I think it</p> <p>24 was, said he did not look right at that time. So</p> <p>25 there was somebody objectively looking from the</p>	<p>14</p> <p>1    outside. He had symptoms at that time.</p> <p>2      Additionally, in his deposition he talks about</p> <p>3    being dizzy and pulling over and someone called 911.</p> <p>4      I think it may have been his boss.</p> <p>5      Q.    Is it your understanding that Mr. Ruffino</p> <p>6    spent the night at Home Depot?</p> <p>7      A.    It is not my understanding that he did</p> <p>8    that, no.</p> <p>9      Q.    So when you said he woke up with symptoms</p> <p>10 and I asked you to identify what those symptoms were</p> <p>11 and you told me an external person at Home Depot</p> <p>12 told him he did not look right and he was dizzy, are</p> <p>13 those the symptoms you are talking about when he</p> <p>14 woke up?</p> <p>15      A.    From my review of the case, I believe he</p> <p>16 was unaware of whatever the abnormal was, which it</p> <p>17 appears to be facial droop, he was unaware of those</p> <p>18 things. Someone had to point that out to him.</p> <p>19 Since he was unaware of that, we don't know exactly</p> <p>20 when it started. Could have been the night before.</p> <p>21 That's why I think it was more than likely a wake-up</p> <p>22 symptom of the stroke.</p> <p>23      Q.    If nobody informed him of it until he was</p> <p>24 at Home Depot, are you just speculating that he woke</p> <p>25 up with those symptoms?</p>
<p>16</p> <p>1      A.    I'm not speculating.</p> <p>2      Q.    Are you guessing?</p> <p>3      A.    I'm not guessing.</p> <p>4      Q.    What do you base it on when your testimony</p> <p>5    is the first report of symptoms was someone at Home</p> <p>6    Depot telling him he, quote-unquote, did not look</p> <p>7    right?</p> <p>8      A.    I'm basing it on when patients present to</p> <p>9    the emergency department you go by your best guess</p> <p>10 of last known normal. And he obviously had</p> <p>11 something that wasn't correct at 7:30 that he was</p> <p>12 unaware of. So there's no way that we can</p> <p>13 definitively say it started at 7:30.</p> <p>14      Q.    When you say it, you mean symptoms?</p> <p>15      A.    Correct. I'm sorry.</p> <p>16      Q.    As a result, there's no way that you can</p> <p>17 definitively say that Mr. Ruffino experienced a</p> <p>18 stroke on February 17, 2016, correct?</p> <p>19      MR. CARTER: Object to form.</p> <p>20      THE WITNESS: That is not correct.</p> <p>21 BY MR. MANOOKIAN:</p> <p>22      Q.    Well, I've asked you and maybe it's a</p> <p>23 deficit in my understanding. Are you saying that</p> <p>24 Mr. Ruffino did experience a stroke on February 17,</p> <p>25 2016?</p>	<p>17</p> <p>1      A.    It is opinion that Mr. Ruffino at some</p> <p>2 point during -- how do I want to phrase this so that</p> <p>3 we can move on?</p> <p>4      I do believe that Mr. Ruffino had a stroke.</p> <p>5 Whether or not I can be certain that it started on</p> <p>6 the 17th or the 16th is the portion that I think</p> <p>7 there is question about.</p> <p>8      Q.    You can't say to a reasonable degree of</p> <p>9 medical certainty even what day the stroke began,</p> <p>10 correct?</p> <p>11      A.    That is correct. It could have started on</p> <p>12 the 16th.</p> <p>13      Q.    What evidence do you rely on to conclude</p> <p>14 that Mr. Ruffino's stroke could have occurred on the</p> <p>15 16th of February?</p> <p>16      A.    The most significant piece of information</p> <p>17 that I read that gives me concern that it may have</p> <p>18 started earlier is the conversation that he had with</p> <p>19 the Home Depot manager, when the Home Depot manager</p> <p>20 noticed that there was something not correct in the</p> <p>21 way that Mr. Ruffino looked, and that was at 7:30.</p> <p>22 And Mr. Ruffino was not aware of that at 7:30. So</p> <p>23 if he was --</p> <p>24      Q.    So the only evidence that you have that</p> <p>25 this stroke might have started on February 16th is</p>

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<p>1 someone at Home Depot telling Mr. Ruffino on 2 February 17th that he didn't look right? 3       A. Is that a question? I'm sorry. 4       Q. Yes, sir. 5       A. Say it again. 6       Q. The only evidence that you rely on to 7 conclude that Mr. Ruffino's stroke may have started 8 on February 16, 2016 is that an individual at Home 9 Depot told him on February 17th that he did not look 10 right? 11      A. That's a portion of why I think there's 12 uncertainty as to the onset with regards to whatever 13 the appearance was of the face. I would imagine 14 it's facial drooping from the individual looking at 15 him saying he didn't look right. There's also a 16 comment in the Rutherford County EMS run report and 17 let me -- I can pull that up. 18      Q. While you are doing that, this statement 19 by a Home Depot employee that he did not look right, 20 was that as specific as the Home Depot employee was 21 regarding his appearance? 22      A. I'd have to go back and look at 23 Mr. Ruffino's deposition to see the wording exactly. 24      Q. What was your understanding when you 25 reached opinions in this case regarding what the</p>	<p style="text-align: right;">18</p> <p>1 Home Depot individual's statement was regarding what 2 didn't look right? 3       A. To the best of my recollection, from 4 Mr. Ruffino's deposition, he was told by this 5 manager, you don't look right. 6       Q. What does that mean? 7       A. What that means -- I don't know what that 8 means exactly. I know that it means he did not look 9 normal to that individual. 10      Q. What is that individual's barometer of 11 normalcy in appearance, do you know? 12      A. I do not know. 13      Q. Did you track that individual down and ask 14 him? 15      A. I have not. 16      Q. Could it have been that Mr. Ruffino looked 17 pale? 18      A. I have no opinion on what it could have 19 meant with respect to that. 20      Q. Could it have meant that he looked 21 disheveled? 22      A. I have no opinion what that meant. I 23 wasn't there at the time. 24      Q. Could it have meant that he had his 25 clothes on inside-out?</p>
<p>1       A. I have no opinion on what that meant. 2       Q. Having his clothes on inside-out wouldn't 3 be a symptom of a stroke, would it? 4       A. It could be. 5       Q. Could it? 6       A. Uh-huh. 7       Q. Having no idea what it meant when this 8 unidentified employee at Home Depot said that 9 Mr. Ruffino did not look right, how did you make 10 that leap to it was a symptom of a stroke? 11      A. Part of an emergency medicine physician's 12 history taking, especially with regards to patients 13 that may have had a stroke, is to try to find the 14 last individual that saw someone, when was the last 15 time you saw this patient, did they appear normal to 16 you, how were they not. So whenever I have an 17 individual that has seen someone that says no, they 18 didn't look right, to me, that brings into question 19 in my mind when did the symptoms start. And if this 20 manager saw something that he thought looked 21 abnormal, to me, that leads me to believe that the 22 symptoms at least were present at 7:30. And since 23 Mr. Ruffino was unaware that there was something not 24 normal or correct in his appearance at that time, 25 then we really don't know exactly what time the</p>	<p style="text-align: right;">20</p> <p>1 onset was. 2       Q. Well, really don't know whether that 3 signals the onset either, do we? 4       A. You are correct. I agree with that. You 5 don't know that the onset was at 7:30. It could 6 have been earlier. 7       Q. It could have been later, couldn't it? 8       A. No. 9       Q. Why not? 10      A. If symptoms were present at 7:30, then -- 11      Q. But you already testified under oath that 12 you have no idea what it meant when this 13 unidentified individual at Home Depot who you've 14 never spoken to made the statement that Mr. Ruffino, 15 quote-unquote, did not look right, correct? 16           MR. WITT: Object to the form of the 17 question. 18           THE WITNESS: I do not know what 19 specifically he saw. But I do know that there was 20 an external third party that saw something that 21 seemed abnormal to them. And that's an important 22 part of a history. 23 BY MR. MANOOKIAN: 24       Q. Do you know whether that individual at 25 Home Depot knew Mr. Ruffino well?</p>

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<p>1       A. I do not know that.</p> <p>2       Q. Do you know whether that was the first 3 time that person had ever seen Mr. Ruffino?</p> <p>4       A. Let me go back to Mr. Ruffino's 5 deposition. My recollection is he had made 6 deliveries there before.</p> <p>7       Q. Rather than have you read through the 8 deposition, which I understand you've already done, 9 I'll just move on because I've only got a couple 10 hours with you here today.</p> <p>11      Do you know whether the unidentified 12 individual at Home Depot did a neurological check on 13 Mr. Ruffino?</p> <p>14      A. I do not know that.</p> <p>15      Q. You have nothing to suggest that he did, 16 correct?</p> <p>17      A. I have no opinion on that.</p> <p>18      Q. Do you know whether the person at Home 19 Depot was a male or a female?</p> <p>20      A. I believe it was a male, but I'm not 21 certain of that either.</p> <p>22      Q. Do you know what his mental state was at 23 the time?</p> <p>24      A. I do not know that.</p> <p>25      Q. You don't know if he was intoxicated?</p>	<p style="text-align: right;">22</p> <p>1       A. I have no opinion on that.</p> <p>2       Q. Do you know if he was under the influence 3 of any drugs?</p> <p>4       A. I have no opinion on that.</p> <p>5       Q. Likewise, you have no opinion on whether 6 or not this person at Home Depot was an accurate 7 historian when it came to Mr. Ruffino's appearance 8 on the morning of February 17, 2016, correct?</p> <p>9       A. It's incumbent upon someone taking a 10 history to not discount what's being told to you by 11 anyone that can provide history on a patient. So I 12 believe you have to give it credence.</p> <p>13      Q. You work in the emergency room?</p> <p>14      A. Yes, sir.</p> <p>15      Q. You work there every day?</p> <p>16      A. Not every day. I enjoy a couple days off 17 here and there.</p> <p>18      Q. Most days?</p> <p>19      A. I'm there clinically between 10 and 12 20 shifts a month.</p> <p>21      Q. Do you ever get people who come in there 22 trying to get pain meds?</p> <p>23      A. Sure.</p> <p>24      Q. You ever get people coming in there trying 25 to get pain meds when they shouldn't have pain meds?</p>
<p>1       A. That's a judgment call. But overall, yes, 2 sometimes it does happen.</p> <p>3       Q. Do you give credibility to their histories 4 blindly?</p> <p>5       A. I listen to all my patients.</p> <p>6       Q. But you find some to be more credible than 7 others, correct? That's part of your job, isn't it, 8 to evaluate all the circumstances, look at the 9 entire history, determine what might be true 10 motivations for what's being reported, and use your 11 judgment as a professional to determine how much 12 weight you are going to give to one historian or 13 another, correct?</p> <p>14      MR. CARTER: Object to form.</p> <p>15      THE WITNESS: It's not my job to determine 16 their motivations. It's my job to determine what's 17 medically in their best interest.</p> <p>18      BY MR. MANOOKIAN:</p> <p>19      Q. In doing that, sometimes you have to weigh 20 people's credibility, correct?</p> <p>21      A. I disagree with that. I don't weigh their 22 credibility. I weigh --</p> <p>23      Q. What do you --</p> <p>24      A. I'm sorry. Go ahead.</p> <p>25      Q. What do you take into account if somebody</p>	<p style="text-align: right;">24</p> <p>1       is coming into the ER looking for opiates?</p> <p>2       A. Do I find objective findings that are 3 consistent with a need for that type of medication? 4 That's what I'm looking for.</p> <p>5       Q. So when they describe their pain level, is 6 that something that you have to factor some of their 7 subjectivity into?</p> <p>8       A. To some extent, sometimes I have to factor 9 that in. For instance, if someone says they have a 10 pain level of 10 out of 10 and they're eating 11 Dorito's and drinking a Coke with normal vital signs 12 as they tell me that, then what I'm observing is not 13 necessarily consistent with what they're describing.</p> <p>14      Q. Do you know whether there was any evidence 15 of a stroke for Mr. Ruffino on the initial CT 16 performed at the hospital at approximately 17 10:37 a.m.?</p> <p>18      A. My recollection is that CT was considered 19 to be normal.</p> <p>20      Q. When you say normal, that means no 21 evidence of a stroke at 10:37 a.m.?</p> <p>22      A. When I say normal, to the radiologist, the 23 brain tissue and appearance on that CT appeared 24 normal. That, in itself, does not exclude a stroke.</p> <p>25      Q. Well, there was no evidence of a stroke on</p>

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<p>1 that CT at 10:37 a.m., correct?</p> <p>2       A.   <b>That CT was read out as normal.</b></p> <p>3       Q.   If there was evidence of a stroke, that CT</p> <p>4 would have been abnormal, correct?</p> <p>5       A.   <b>Correct.</b></p> <p>6       Q.   So there was no evidence of a stroke on</p> <p>7 that normal CT finding for Mr. Ruffino at</p> <p>8 approximately 10:37 a.m. at the facility on February</p> <p>9 17, 2016, correct?</p> <p>10      A.   I am not a radiologist and I cannot make</p> <p>11 an interpretation myself of the films. But the</p> <p>12 recollection I have of the report from the</p> <p>13 radiologist is it was normal.</p> <p>14      Q.   With no evidence of a stroke, correct?</p> <p>15      A.   <b>I can go by only what they say.</b></p> <p>16      Q.   Okay. Well, it seems like you are willing</p> <p>17 to take the word of the guy at the Home Depot pretty</p> <p>18 blindly.</p> <p>19      Do you have some reason to dispute the</p> <p>20 radiologist's finding?</p> <p>21      A.   <b>I have no reason to dispute it. I believe</b></p> <p>22 <b>the CT was read out as normal.</b></p> <p>23      Q.   With no evidence of a stroke, correct?</p> <p>24      A.   <b>I don't believe that was in their</b></p> <p>25 <b>dictation.</b></p>	<p>26</p> <p>1       Q.   But if there had been evidence of a</p> <p>2 stroke, you agree that the CT finding would have</p> <p>3 been abnormal, correct?</p> <p>4       A.   <b>That is correct.</b></p> <p>5       Q.   And as a result, we can conclude there was</p> <p>6 no evidence of a stroke with the CT performed at</p> <p>7 approximately 10:37 a.m. on February 17, 2016,</p> <p>8 correct?</p> <p>9       A.   I don't agree with that statement. I</p> <p>10 believe the CT was read out as normal. I do not</p> <p>11 agree with the statement that that means there were</p> <p>12 no signs of a stroke.</p> <p>13      Q.   What were the signs of the stroke that</p> <p>14 were present in the CT that took place at</p> <p>15 approximately 10:37 on February 17, 2016?</p> <p>16      A.   <b>The CT was read out as normal.</b></p> <p>17      Q.   So there were no signs of a stroke,</p> <p>18 correct?</p> <p>19      A.   <b>The CT was read out as normal. There were</b></p> <p>20 <b>no abnormal findings that the radiologist commented</b></p> <p>21 <b>on.</b></p> <p>22      Q.   Have you just decided that you don't want</p> <p>23 to say that there was no evidence of a stroke in</p> <p>24 that CT?</p> <p>25      A.   I guess the part that I'm struggling with</p>
<p>28</p> <p>1 is, I get a CT report or any reasonable physician</p> <p>2 gets a CT report, it's read out as normal, that does</p> <p>3 not preclude that a stroke has occurred. I guess</p> <p>4 that's the part that I'm struggling with.</p> <p>5       Q.   I understand.</p> <p>6       A.   <b>Okay.</b></p> <p>7       Q.   But the CT itself showed no evidence that</p> <p>8 a stroke had occurred, correct?</p> <p>9       A.   <b>The CT was read out as normal.</b></p> <p>10      Q.   The CT could have been wrong, right?</p> <p>11      MR. CARTER: Object to form.</p> <p>12      <b>THE WITNESS: There are no certainties.</b></p> <p>13 BY MR. MANOOKIAN:</p> <p>14      Q.   Okay. But the CT showed no evidence that</p> <p>15 a stroke had occurred by 10:37, correct?</p> <p>16      A.   <b>The CT was read out as normal. That does</b></p> <p>17 <b>not preclude the fact that a stroke has occurred.</b></p> <p>18      Q.   By 10:37 a.m. on February 17, 2016, other</p> <p>19 than the unknown individual at Home Depot, what</p> <p>20 evidence do you have that a stroke had occurred?</p> <p>21      A.   <b>One of the other portions in review of the</b></p> <p>22 <b>records that brings into my mind a question about</b></p> <p>23 <b>the exact onset was one of the statements typed by</b></p> <p>24 <b>one of the medical providers from Rutherford County</b></p> <p>25 <b>EMS where they noticed that there was some slurred</b></p>	<p>29</p> <p>1 speech present and the patient advised them that</p> <p>2 that had been present since December of the year</p> <p>3 before.</p> <p>4       Q.   Does that mean that the onset of symptoms</p> <p>5 for the stroke that occurred sometime in February of</p> <p>6 2016 were in December of 2015?</p> <p>7       A.   <b>It gives me concern that it occurred</b></p> <p>8 <b>earlier than the 17th. Whether it was in December</b></p> <p>9 <b>or whether there were more symptoms that developed</b></p> <p>10 <b>afterward, I can't answer that. But he did advise</b></p> <p>11 <b>to the EMS that he had had slurred speech since</b></p> <p>12 <b>December.</b></p> <p>13      Q.   So despite normal CT being read at</p> <p>14 10:37 a.m., you believe Mr. Ruffino may have</p> <p>15 experienced a stroke on some unspecified day either</p> <p>16 in 2015 or 2016 because of the statement by someone</p> <p>17 at Home Depot and a line in the EMS report?</p> <p>18      A.   <b>That gives me concern, yes.</b></p> <p>19      Q.   I understand the concern. But can you say</p> <p>20 to a reasonable degree of medical certainty that</p> <p>21 Mr. Ruffino experienced a stroke at some time prior</p> <p>22 to 10:37 a.m. on February 17, 2016?</p> <p>23      A.   <b>There were symptoms present before that</b></p> <p>24 <b>time.</b></p> <p>25      MR. MANOOKIAN: Listen to my question.</p>

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	30	1 Q. I'm not talking about when he might have 2 had his clothes on inside-out. I'm asking about 3 when he actually experienced a stroke and whether 4 you can say you know one way or another.
1		5 A. I cannot tell you exactly when his stroke 6 occurred. I do believe it occurred earlier than 7 10:30.
2		8 Q. Is it your testimony to a reasonable 9 degree of medical certainty that Mr. Ruffino 10 experienced a stroke prior to 10:37 on February 17, 11 2016?
3		12 A. I believe that he had symptoms of a stroke 13 earlier than that time.
4		14 Q. I'm not asking about the symptoms. You 15 know that I'm not because we've been through it. 16 Do you just not want to answer certain 17 questions?
5		18 A. I don't believe that's a clear-cut answer.
6		19 Q. Because we're paying a lot of money to ask 20 you questions today and to get your answers. You 21 understand that, right?
7		22 A. I understand how it works.
8		23 Q. What are you charging me an hour to answer 24 questions today?
9		25 A. 500 an hour.
	32	1 Q. 500 an hour. Can you listen to this 2 question and answer it about experiencing a stroke, 3 not a symptom of a stroke which you told me might be 4 having his clothes on inside-out? Can you do that?
5		5 MR. CARTER: Object to form.
6		6 MR. WITT: Object to the form.
7		7 THE WITNESS: I'm happy to answer the 8 questions that I'm asked to the best of my ability.
9		9 BY MR. MANOOKIAN:
10		10 Q. Is it your opinion to a reasonable degree 11 of medical certainty that Mr. Ruffino experienced a 12 stroke prior to 10:37 a.m. on February 17, 2016?
13		13 MR. CARTER: Object to form.
14		14 THE WITNESS: I believe that the symptoms 15 of a stroke had started earlier than that. One 16 cannot be, in my opinion, absolutely certain the 17 time of onset other than what you glean from the 18 history that you can get from the information that's 19 been given. He had symptoms earlier than 10:30. I 20 believe it is possible that his stroke occurred 21 earlier than that time.
22		22 BY MR. MANOOKIAN:
23		23 Q. While it may be possible that Mr. Ruffino 24 experienced a stroke earlier than 10:37 a.m. on 25 February 17, 2016, you can't say it to a reasonable
	33	1 degree of medical certainty, can you? 2 A. I cannot be certain, no, I cannot. 3 Q. You can't state it to a reasonable degree 4 of medical certainty, can you? 5 A. I cannot be certain the exact time that it 6 occurred. I do believe it was before 10:30. 7 Q. But you can't state that to a reasonable 8 degree of medical certainty, even though you believe 9 it might be possible, correct? 10 A. I cannot be certain exactly when the onset 11 was. 12 Q. Do you agree that certainly in 13 Mr. Ruffino's case the onset of symptoms was not 14 clear? 15 A. I agree with that. 16 Q. How many hours after a stroke occurred 17 would it take for evidence of that stroke to be 18 demonstrated on a head CT? 19 A. That's a difficult question to answer, and 20 for this reason. Typically, you'll start to see 21 some changes between six and eight hours out. 22 However, there are cases where I've had patients 23 that have had strokes and had mild symptoms, 24 residual symptoms after the stroke and they've had 25 CAT scans that appear normal. So a normal CAT scan

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<p>1 does not always preclude the fact that someone has      2 had a stroke. And when I say normal, I mean      3 interpreted by a radiologist as normal.      4 Q. What's another way to determine if someone      5 is neurologically normal?      6 A. I don't understand the question.      7 Q. Do nurses do neurological checks?      8 A. Nurses do a cursory nursing exam which is      9 not the same as a full neurological exam by a      10 physician.      11 Q. Is that a yes to my question?      12 A. Please restate the question.      13 Q. Do nurses do neurological checks?      14 A. They do cursory neurological evaluations,      15 yes.      16 Q. Is the phrase cursory neurological      17 evaluation a clinical term?      18 A. I'm a clinician and I'm using the term, so      19 in this case it would be a clinical term.      20 Q. Is it your position that any phrase you      21 use because you're a clinician becomes a clinical      22 term?      23 A. It's not every phrase, no.      24 Q. Okay. Is there an accepted clinical      25 definition of the phrase cursory nursing exam?</p>	<p>34</p> <p>1 A. There is not an accepted definition, no.      2 Q. What hospital do you work at?      3 A. Mostly Saint Francis Bartlett and some at      4 Saint Francis Park.      5 Q. Do nurses in the emergency departments at      6 those hospitals conduct neurological checks on      7 individuals who might have been experiencing a      8 stroke?      9 A. They do sometimes do neurological exams,      10 yes.      11 Q. Are the neurological exams performed by      12 nurses at Saint Francis performed for the purpose of      13 determining whether someone might be experiencing a      14 stroke?      15 A. The nursing exams are looking for abnormal      16 findings. That's a different exam though than is      17 performed by the physician at the time. I guess      18 what I'm getting at is, is their exam, it's just      19 different from the standpoint of I'm doing a full      20 NIH stroke scale in a little more detail. If you      21 just order neuro checks on patients, are they awake,      22 alert, are they able to stand, very vague and basic      23 neurological evaluation for just simply to do neuro      24 checks. It's different than NIH stroke scale done      25 by a physician.</p>
<p>1 Q. Why do you keep bringing up physicians?      2 I'm just asking you whether or not nurses do these      3 examinations.      4 A. Nurses do neuro checks, yes.      5 Q. And they do neuro checks to determine      6 whether someone might be experiencing a stroke, for      7 example?      8 A. They do neuro checks for a multitude of      9 reasons. That would be one of those reasons.      10 Q. Would that type of neuro check be more      11 clinically valuable to you than a random observation      12 by an unspecified person at a Home Depot?      13 A. I have to give -- it's important for me to      14 listen to all sources of history. So I would not      15 say that one is more important than the other.      16 Q. It's your clinical opinion here today that      17 a neurological check performed by a licensed      18 healthcare practitioner in the confines of a medical      19 facility is not more clinically valuable to you as a      20 physician than a random observation by this person      21 at a Home Depot?      22 A. That's not what I'm saying.      23 Q. You know that Mr. Ruffino had a number of      24 neurological checks performed on him by nurses in      25 the time that he was at the hospital, correct?</p>	<p>36</p> <p>1 A. I believe in review of the records there      2 were some neuro checks, yes.      3 Q. Did you read Nurse Bromley's deposition?      4 A. Yes.      5 Q. Do you recall whether she testified that      6 she performed neurological checks on Mr. Ruffino?      7 A. If it is the individual I'm thinking      8 about, I could be incorrect, but I think Nurse      9 Bromley is a male.      10 MR. CARTER: That's right.      11 THE WITNESS: So I read the right      12 deposition?      13 MR. CARTER: Yes.      14 THE WITNESS: There were neuro checks done      15 by Nurse Bromley.      16 BY MR. MANOOKIAN:      17 Q. Do you recall that Nurse Bromley performed      18 at least six neuro checks in a two-hour period      19 between 10 a.m. and noon on February 17, 2016?      20 A. I don't recall the exact number.      21 Q. Do you recall that Nurse Bromley performed      22 multiple neuro checks in the two-hour period --      23 A. I recall -- I'm sorry.      24 Q. -- between 10 a.m. and noon?      25 A. I recall there being more than one. I</p>

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<p>1   <b>I don't know how many there were.</b></p> <p>2       Q.   What were Nurse Bromley's findings after 3   performing multiple neurological checks on 4   Mr. Ruffino?</p> <p>5       A.   <b>I would have to go back and look at that 6   portion of the record.</b></p> <p>7       Q.   Did you find that portion of the record to 8   be less helpful or valuable in reaching your 9   opinions than, for example, an individual's 10   statements at Home Depot?</p> <p>11      A.   <b>I don't find one to be less or more 12   helpful in forming opinion.</b></p> <p>13      Q.   As a clinician, it would be important to 14   take into consideration and evaluate the multiple 15   neurological checks performed on Mr. Ruffino between 16   10 a.m. and noon, correct?</p> <p>17      A.   <b>As a clinician, it's important for me to 18   take a history from my patient and glean as much 19   information as I can from outside sources and inside 20   sources to come to an opinion on how best to treat 21   someone.</b></p> <p>22      Q.   Is that a yes to my question?</p> <p>23      A.   <b>Please restate the question.</b></p> <p>24      Q.   Would it be important to take into 25   consideration the multiple neurological checks</p>	<p style="text-align: right;">38</p> <p>1   performed on Mr. Ruffino between 10 a.m. and noon?</p> <p>2       A.   <b>It's important to take a history from all 3   sources. So if that information is available at the 4   time, it's useful to have.</b></p> <p>5       Q.   It's important to take the neurological 6   checks that occurred on Mr. Ruffino between 10 and 7   noon into consideration, correct?</p> <p>8       A.   <b>It's important to take all information 9   into consideration.</b></p> <p>10      Q.   I get it. I mean, I understand it's 11   important to take all information into 12   consideration. I'm being a little more specific.</p> <p>13      A.   <b>I understand.</b></p> <p>14      Q.   It's important to take all of it into 15   consideration and certainly it's important to take 16   those neuro checks into consideration, right?</p> <p>17      A.   <b>If that's available to you, it's important 18   to take them into consideration.</b></p> <p>19      Q.   There's nothing controversial about that, 20   is there?</p> <p>21      A.   <b>One to me is not more important than the 22   other.</b></p> <p>23      Q.   Those neurological checks are just as 24   important as anything else that you would take into 25   consideration, correct?</p>
<p>1      A.   <b>All of the history available is important.</b></p> <p>2       Q.   Did you author a facts section of your 3   report?</p> <p>4       A.   <b>My report is right there. I'll pull it up 5   here as well.</b></p> <p>6       Q.   Do you recall if you authored a section 7   entitled facts?</p> <p>8       A.   <b>I don't recall the exact way it was typed 9   up at the time without referring to it. But I can 10   certainly refer to it. There it is. Yes, there is 11   one called facts.</b></p> <p>12      Q.   In that section you laid out the facts 13   that you thought were important in arriving at your 14   opinions, correct?</p> <p>15      A.   <b>That is correct.</b></p> <p>16      Q.   And you did so in detail, correct?</p> <p>17      A.   <b>Detail that I felt was applicable.</b></p> <p>18      Q.   So anything that's applicable is contained 19   here in this facts section that you took the time to 20   author as part of the report you were paid to do in 21   this case, correct?</p> <p>22      A.   <b>I believe these facts help lead to an 23   opinion in this case, that is correct.</b></p> <p>24      Q.   Listen to my question. All applicable 25   facts that you used in arriving at your opinion are</p>	<p style="text-align: right;">40</p> <p>1   detailed in your report that you were paid to 2   complete that were delivered to the lawyers in this 3   case, correct?</p> <p>4       A.   <b>These are the facts that I think were most 5   pertinent in this case. There are other portions of 6   the record that I reviewed that also gave 7   information that was useful to me in coming up with 8   the opinions. But these are the facts that I felt 9   were most pertinent for forming the opinion.</b></p> <p>10      Q.   Did you just previously tell me that all 11   facts are equally important when we were talking 12   about the neurological checks?</p> <p>13      A.   <b>All history available is important with --</b></p> <p>14      Q.   And the neurological checks aren't any 15   less important, correct?</p> <p>16      A.   <b>All history is important.</b></p> <p>17      Q.   Can you answer my question?</p> <p>18      A.   <b>Neurological checks are important, history 19   is important, all of it is important.</b></p> <p>20      Q.   The neurological checks are just as 21   important as any other facts that you would 22   consider, correct?</p> <p>23      A.   <b>They are just as important, yes.</b></p> <p>24      Q.   Why are they omitted from the facts 25   section of your report?</p>

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<p>1       A. Because they're not the most pertinent 2 facts to me for forming the opinion. 3       Q. How do you use the word pertinent? 4       A. Pertinent to me means the things that are 5 most important at that time, the most pressing, the 6 most -- 7       Q. So those neurological checks weren't any 8 less important, correct? 9       A. The neurological checks were important, 10 that is correct. 11      Q. And they weren't any less important than 12 any of the other data that you considered, correct? 13      A. All of the history is important. But 14 those neurological checks did not affect or lead me 15 to have any difference of opinion versus what's 16 written on the facts section of the report. 17      Q. Do you agree in the facts section of your 18 report, which is what your opinions are based on and 19 what you testified included all the pertinent data 20 that you used, there's a gap between 9:56 a.m. and 21 12:20 p.m. demonstrated in points 5 and 6? 22      A. Please repeat what the question was. 23      Q. Your facts section, it omits the period of 24 Mr. Ruffino's care between 9:56 a.m. and 12:20 p.m., 25 correct?</p>	<p style="text-align: right;">42</p> <p>1       A. I don't believe that it's an omission. I 2 believe that these are the facts that led me to the 3 opinion that I have. 4       Q. Show me where in this facts section you 5 discuss the specifics of Mr. Ruffino's care that 6 occurred between 9:56 a.m. and 12:20 p.m. 7       A. This facts section does not have a 8 complete reproduction of the medical chart between 9 that period of time, no. 10      Q. I didn't ask you if it had a complete 11 reproduction of the medical chart. I wouldn't 12 expect that. 13      A. Okay. 14      Q. That wouldn't be a report, would it? 15      A. Well, I was confused. 16      Q. That would just be the medical records, 17 wouldn't it? 18      A. Well, that's what it appeared you were 19 asking. That's what was confusing. 20      Q. I'm asking if you even discussed the 21 medical care he received between 9:56 a.m. and 22 12:20 p.m.? 23      A. That portion is not in the facts section 24 of my report. 25      Q. You omitted that portion from the facts</p>
<p>1       section of your report, didn't you? 2       A. An omission would be something that is 3 intentionally done. What I put in the facts section 4 were the things that were most pertinent to me to 5 form the opinion. 6       Q. An omission is something that is 7 intentionally done. You wrote this, didn't you? 8       A. I did write this. 9       Q. You wrote it volitionally, correct, 10 intentionally? 11      A. Yes. 12      Q. You chose what went in this, right? 13      A. That is correct. 14      Q. Mr. Witt didn't tell you what to write, 15 did he? 16      A. That is correct. 17      Q. Mr. Looper didn't tell you what to write, 18 correct? 19      A. That is correct. 20      Q. You chose what to write? 21      A. That is correct. 22      Q. You chose to omit the portion of 23 Mr. Ruffino's care that occurred between 9:56 a.m. 24 and 12:20 p.m., correct? 25      A. I chose to put pertinent facts that helped</p>	<p style="text-align: right;">44</p> <p>1       form the opinion that I have. 2       Q. You do not think that the care that 3 Mr. Ruffino received between 9:56 a.m. and 4 12:20 p.m. was pertinent, correct? 5       A. That's not what I said. 6       Q. Tell me what you are saying, because it 7 sounds like you're trying to parse out language. 8       I'm just asking you to confirm that you didn't 9 discuss any of the care that occurred in that 10 greater than two-hour window in your facts section, 11 correct? 12      A. The pertinent parts of the history and 13 record were what were put in the facts section that 14 come into my opinion. 15      Q. I got it that you put the pertinent stuff 16 in. You left the impertinent stuff out, right? 17      A. Doesn't mean it's not important. It just 18 didn't impact my opinion. 19                   MR. MANOOKIAN: Take a five-minute break. 20                   MR. WITT: Yes, sir. 21                   (Recess taken) 22 BY MR. MANOOKIAN: 23      Q. Do you agree that Mr. Ruffino was driving 24 a delivery truck on the morning of February 17, 25 2016?</p>

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<p>1        A.    Mr. Ruffino was driving a truck. I can't 2 be certain what kind it was. I don't recall.  3        Q.    Do you have any evidence that Mr. Ruffino 4 drove the delivery truck on the morning of February 5 17, 2016 in anything other than a satisfactory 6 fashion?  7        A.    I have no reason to think otherwise.  8        Q.    Have you reviewed any dash cam video?  9        A.    No.  10      Q.    You haven't reviewed the dash cam video of 11 Mr. Ruffino on February 17, 2016?  12      A.    No, sir.  13      Q.    Do you know whether that would show or 14 indicate whether, for example, his clothes were on 15 inside-out?  16      A.    If I haven't seen it, then I wouldn't be 17 able to give an opinion about it.  18      Q.    Well, someone might have told you.  19      A.    No one has told me and I haven't seen it.  20      Q.    Have you reviewed imaging of Mr. Ruffino's 21 head performed in December of 2016?  22      A.    I have not.  23      MR. MANOOKIAN: Those are all my 24 questions.  25      MR. WITT: I have no questions.</p>	<p style="text-align: right;">46</p> <p>1                    MR. CARTER: I don't have any questions 2 either.  3                    MR. MANOOKIAN: Thank you, Doctor. 4                    (Thereupon, Exhibit No. 1 was marked 5 for identification.)  6                    (Whereupon, the deposition was 7 concluded at 2:03 p.m.)  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p>1 2 3                    C E R T I F I C A T E 4    STATE OF TENNESSEE      ) 5    COUNTY OF SHELBY      ) 6 7        I, SANDRA MARCHKY, RMR, CRR, LCR #729, 8    Licensed Court Reporter, in and for the State of 9    Tennessee, do hereby certify that the above 10   deposition was reported by me, and the transcript is 11   a TRUE and accurate record to the best of my 12   knowledge, skills, and ability. 13   I further certify that I am not related to 14   nor an employee of counsel or any of the parties to 15   the action, nor am I in any way financially 16   interested in the outcome of this case. 17   I further certify that I am duly licensed by 18   the Tennessee Board of Court Reporting as a Licensed 19   Court Reporter as evidenced by the LCR number and 20   expiration date following my name below. 21   I further certify that this transcript is 22   the work product of this court reporting agency and 23   any unauthorized reproduction and/or transfer of it 24   will be in violation of Tennessee Code Annotated 25   39-14-104, Theft of Services.  _____ SANDRA MARCHKY, LCR #729 Expiration Date 6-30-2019 ALPHA REPORTING CORPORATION 236 Adams Avenue Memphis, Tennessee 38103</p>	<p style="text-align: right;">48</p>

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